

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
DETROIT THERMAL, LLC,)	Case No. U-18364
for approval of a steam sales agreement.)	
_____)	

At the May 11, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On April 10, 2017, Detroit Thermal, LLC (Detroit Thermal), filed an application for *ex parte* approval of a steam sales agreement for the supply of steam service to Becton, Dickinson and Company (BD). Detroit Thermal states that it and BD explored several proposals for the provision of service, including a rate based on Detroit Thermal's published steam service rate. The parties arrived at an equitable agreement, which is attached as Exhibit A.

The agreement has an initial term of five years, beginning the day after the date of the Commission's approval of the agreement. The rate for service set forth in the agreement has a fixed charge. Given BD's projected steam consumption, the fixed monthly charges will cover the variable costs of the steam BD consumes while making a contribution to Detroit Thermal's margins. Both the customer and Detroit Thermal will benefit from the agreement.

Detroit Thermal is not requesting any ratemaking determinations or any change in the rates or costs of service to other customers. Approval of the contract does not increase any other customer's rate; therefore, *ex parte* approval of the application is appropriate.

The Commission finds that the steam sales agreement is reasonable and in the public interest, and should be approved.

THEREFORE, IT IS ORDERED that the steam sales agreement between Detroit Thermal, LLC, and Becton, Dickinson and Company, attached to this order as Exhibit A, is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of May 11, 2017.

Kavita Kale, Executive Secretary

EXECUTION COPY

DETROIT THERMAL, LLC
STEAM SERVICE AGREEMENT

THIS AGREEMENT, made as of March 28, 2017, by and between DETROIT THERMAL, LLC, an Ohio limited liability company, 541 Madison Ave., Detroit, MI 48226, hereinafter called "Detroit Thermal" or the "COMPANY", and BECTON, DICKINSON AND COMPANY, whose local business address is 920 Henry St., Detroit, Michigan 48201, hereinafter called the "CUSTOMER", is for a supply of steam to be delivered by the COMPANY to the following location:

Service Address: 920 Henry St., Detroit, Michigan 48201

This Agreement supersedes any and all previous agreements for steam service provided by the COMPANY to the above stated service address. Steam service shall be delivered by the COMPANY and received and paid for by the CUSTOMER under the following terms and conditions:

1. **SCOPE OF SERVICE.** Except to the extent this Agreement provides for different terms and conditions, the sale and delivery of steam under this Agreement is governed by the terms of the COMPANY'S filed tariff, *MPSC No.1 - Steam*, as revised from time to time. A copy of the COMPANY'S current filed tariff, *MPSC No.1 - Steam*, is attached to this Agreement as Exhibit A and is incorporated herein by reference. The terms of this Agreement shall apply in all cases where a conflict exists with the provisions of the COMPANY'S filed tariff, *MPSC No.1 - Steam*. CUSTOMER acknowledges that the COMPANY'S filed tariff, *MPSC No.1 - Steam*, is revised from time to time and CUSTOMER shall be bound by any such revisions to the tariff.
2. **TERM.** This Agreement shall be for a period of five years beginning on the day after the date the Michigan Public Service Commission ("MPSC") issues an Order approving this Agreement.
3. **PRICE.** The COMPANY will charge and the CUSTOMER will pay for steam service at a fixed rate of [REDACTED] per Mlb. plus applicable taxes, including but not limited to State Sales Tax and City of Detroit Utility Users Tax, for all steam provided to the Service Address by COMPANY during the term of this Agreement. Payment will be due twenty-one (21) days from date of invoice.
4. **LONG TERM COMMITMENT INCENTIVE.** As an inducement for CUSTOMER committing to entering into a long-term steam service agreement, the COMPANY shall apply a credit equal to [REDACTED] per Mlb. to the CUSTOMER'S first six (6) monthly invoices after the MPSC approval of this Agreement.
5. **EARLY TERMINATION CHARGE.** In the event of CUSTOMER'S termination of this Agreement prior to the expiration of the term of this Agreement, the CUSTOMER agrees to pay to the COMPANY an Early Termination Charge equal to \$21,875 times the number of months remaining in the term of this Agreement. If the CUSTOMER terminates this Agreement during the middle of a month, that month shall be pro-rated on a daily basis. Additionally, the CUSTOMER agrees to repay 20% of the Long Term Commitment Incentive paid by the COMPANY times the

number of years remaining in the term of this Agreement. The amounts due under this paragraph shall be due within sixty (60) days of the CUSTOMER's termination of this Agreement.

6. **METERING & BILLING.** The COMPANY will meter the service address identified in this agreement for monthly steam consumption. Currently steam consumption at the service address is measured via two steam meters. The COMPANY will combine the steam consumption measured by every meter located at the service address and issue a single monthly bill for the total volume of steam consumed.

7. **HENRY PLANT USE.** The COMPANY and CUSTOMER agree to explore the utilization of the Henry Steam Plant as a future source for generating the CUSTOMER's steam demand. If, prior to the expiration of this Agreement, the parties develop a mutually acceptable plan regarding the use of the Henry Steam Plant to generate steam to meet the CUSTOMER's demand, the parties agree to enter into good faith negotiations for the purpose of renegotiating this Agreement based on the use of the Henry Steam Plant.

8. **FINANCIAL RESPONSIBILITY.** Should the creditworthiness or financial responsibility of CUSTOMER become unsatisfactory to the COMPANY at any time during which service is in effect, the COMPANY may require CUSTOMER to provide a security deposit in an amount the COMPANY reasonably determines to be adequate before further deliveries of steam are made. In the event CUSTOMER shall (i) make an assignment or any general arrangement for the benefit of creditors; (ii) default in the payment or performance of any obligation to COMPANY under this Agreement or any other contract between the parties hereto; (iii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iv) otherwise become bankrupt or insolvent (however evidenced); (v) be unable to pay its debts as they fall due; or (vi) fail to perform its further obligations under this Agreement within five (5) business days of a reasonable request by the COMPANY, then the COMPANY shall have the right to withhold or suspend deliveries of steam or terminate this Agreement with five (5) days written notice, in addition to any and all other remedies available hereunder or pursuant to law.

In the event the COMPANY requires the CUSTOMER to provide a security deposit the COMPANY, upon termination of this Agreement, will return any security deposit to CUSTOMER with interest at the actual rate earned by the COMPANY's interest bearing checking account, less any amount needed to cure any defaults by the CUSTOMER, which are then existing.

9. **REQUIREMENTS.** During the term of this Agreement the CUSTOMER shall purchase all of its steam requirements for the 920 Henry St., Detroit, Michigan 48201 service address exclusively from the COMPANY.

10. **INDEMNIFICATION.** To the maximum extent permitted by law, CUSTOMER shall indemnify, release, defend and hold harmless COMPANY and its members, officers, directors, managers, employees, representatives and agents from and against any and all suits, sanctions, actions, liabilities, legal proceedings, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorney fees and expenses, for any injury to or death of third

parties or loss or damage to or loss of property of third parties arising directly under this Agreement, solely to the extent caused by the acts or omissions of CUSTOMER or its employees, agents or contractors.

To the maximum extent permitted by law, COMPANY shall indemnify, release, defend and hold harmless CUSTOMER and its members, officers, directors, managers, employees, representatives and agents from and against any and all suits, sanctions, actions, liabilities, legal proceedings, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorney fees and expenses, for any injury to or death of third parties or loss or damage to or loss of property of third parties arising directly under this Agreement, solely to the extent caused by the acts or omissions of COMPANY or its employees, agents or contractors.

11. **FORCE MAJEURE.** If COMPANY shall be delayed, hindered in, or prevented from the performance of any of its obligations under this Agreement as a result of Force Majeure (as hereinafter defined), it shall not be liable for loss or damage for the failure or be liable to CUSTOMER for a breach of contract. "Force Majeure" shall mean any period of delay which arises from or through Acts of God; strikes, lockouts or labor difficulty; explosion, sabotage, accident, riot or civil commotion; act of war; fire or other casualty; legal requirements; delays caused by the CUSTOMER; causes beyond the reasonable control of COMPANY; and delay, interruption or termination of steam, water, electricity, gas or other commodities supplied to COMPANY by third parties for reasons other than non-payment or non-performance by the COMPANY of its obligations under any applicable supply contract.

12. **ENTIRE AGREEMENT.** This is the entire Agreement and understanding between the parties and it supersedes all prior understandings and agreements regarding the subject matter addressed herein, whether oral or written.

13. **MODIFICATION.** This Agreement may not be amended, revoked, changed or modified except by prior written agreement executed by all parties. No waiver of any provision of this Agreement will be valid unless in writing and signed by the party against whom such waiver is charged. The waiver of any breach of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of this Agreement nor shall any waiver authorize the nonobservance of any other occurrence of the same or of any other covenant or condition thereof.

14. **ASSIGNMENT.** This Agreement will be binding upon the CUSTOMER'S successors and its permitted assigns and will be for the benefit of COMPANY, its successors, and its assigns. The CUSTOMER may not assign this Agreement to another party without prior written consent of the COMPANY, which consent may not be unreasonably withheld. The COMPANY may assign this Agreement with the CUSTOMER'S consent not to be unreasonably withheld to a purchaser or other transferee of all or substantially all of its thermal energy business or a successor operator of its thermal energy business provided that such purchaser, transferee or successor operator assumes the COMPANY'S obligations under this Agreement. After such an assignment, the COMPANY shall have no liability or obligations to the CUSTOMER.

15. **SEVERABILITY.** The invalidity of all or any part of any sections, subsections, or paragraphs of this Agreement shall not invalidate the remainder of this Agreement or the remainder of any paragraph or section not invalidated unless the elimination of such subsections, sections, or paragraphs shall substantially defeat the intents and purposes of the parties.

16. **NOTICE.** Except as otherwise specifically provided for in this Agreement, all notices, statements, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be hand delivered, sent by telefacsimile, or forwarded by courier (such as Federal Express) in each case against written receipt or confirmation, to the following addresses:

If to COMPANY:

Detroit Thermal, LLC
Attention: Joe Haak – Vice President Finance
541 Madison Ave.
Detroit MI 48226
Telephone: (313) 378-2858
Fax: (313) 963-7285

If to CUSTOMER:

Becton, Dickinson and Company
Attention: Plant Manager
920 Henry St.
Detroit, Michigan 48201
Phone: 313.442.8769
Fax: 313.442.8865

with a copy to:

General Counsel
One Becton Drive
Franklin Lakes, NJ 07417
Phone: 201-847-6800
Fax:

or to such other person or address as the addressee may have specified in a notice duly given as provided herein. All notices given in the foregoing manner shall be effective when received.

17. **CAPTIONS.** The paragraph headings are included solely for convenience and shall in no event affect, or be used in connection with, the interpretation of this Agreement and do not modify the provisions contained in the sections. If there are any disputes regarding the construction of this Agreement or any of its provisions, ambiguities or questions of interpretation will not be construed more in favor of one party than the other; rather, questions of interpretation will be construed equally as to each party.

18. **REPRESENTATION.** The parties represent and acknowledge that they have had full opportunity to seek the legal advice of the attorney of their choice and that they have read the terms of this Agreement and that its terms are fully understood and accepted by them.

19. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be enforceable, and all of which together shall constitute one agreement.

20. **APPROVAL.** This Agreement is explicitly conditioned upon approval in its original form by the MPSC.

21. **JURISDICTION AND CHOICE OF LAW.** The MPSC shall be the exclusive forum for any claims by CUSTOMER against COMPANY arising out of or related to the rates for service or services provided under the terms of this Agreement or otherwise within the jurisdiction of the MPSC. This Agreement is subject to Michigan law, without regard to conflict-of-law principles.

COMPANY:

DETROIT THERMAL, LLC

By: 

Name: STEVE WHITE

Title: President

Date: 3.30.17

CUSTOMER:

BECTON, DICKINSON AND COMPANY

By: 

Name:

Title:

Patrick Williams
VP, Global Indirect Procurement

Date: 30 MARCH 2017

